



AUSTIN 11, TEXAS

"Section 1. The Lieutenant Governor of the State of Texas is hereby authorized to appoint two men who are experienced in the management and practical operation of railroads, and to appoint a third man as chairman, who together with the other two appointees shall constitute the Board of Managers of the Texas State Railroad, which board shall, in the manner and as provided by law, exercise full and plenary control and management of the Texas State Railroad. The members of said board shall serve without pay except such actual and necessary expenses as may be incurred by them while in the performance of their duties as members of said Board of Managers. And should there become a vacancy in the Board of Managers thus created, the remaining member or members of the board, together with the Lieutenant Governor of Texas, shall in writing designate a proper person to fill such vacancy; which member so selected shall be clothed with all the powers of the original member whose place he is selected to fill." (Undersooring ours)

Hon. J. E. Angly
Hon. Coke Stephenson, Page 2 O-3162

It is our opinion that either remaining members of the Board (if both will not concur in the appointment) acting in concert with the Lieutenant Governor may fill the vacancy. This must necessarily be true otherwise, one member could always paralyze the appointing power with the Legislature created.

As stated in 22 R. C. L. at page 433 "'with the consent of' any board means with the consent of a majority of its members." See also Selby v. Portland, 14 Ore. 243, 12 Pac. 377, 58 Am. Rep. 307. See also Rousse v. Johnson, 234 Ky. 473, 28 S. W. (2d) 745.

It is also stated in 46 Corpus Juris at page 954 "where an appointment is to be made by two bodies by joint ballot, in case their nomination for the office separately made do not concur, the appointment of an officer by a majority of the whole number after assembly in joint meeting is a valid appointment, although the members of one of such bodies taken no part therein."

Consequently, it is our opinion and you are advised that the Lieutenant Governor of the State of Texas may act concertedly with either remaining members of the Board of Managers of the Texas State Railroad to fill a vacancy existing in said Board pursuant to Section 1 of Senate Bill 69, Acts 38th Legislature, Regular Session, 1923, page 3.

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/ James D. Smullen

By James D. Smullen
Assistant

JDS:EP:LDW

APPROVED FEB. 15, 1941

GEORGE C. MANN

ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE BY B W B CHAIRMAN